

ENTERED

March 09, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MISAEEL TOALA, #06102,

Plaintiff,

VS.

DISTRICT ATTORNEY DAWN ALLISON,
et al.,

Defendants.

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CIVIL ACTION NO. 4:21-4158

ORDER OF DISMISSAL

Plaintiff Misael Toala is confined in the Wharton County Jail. Toala proceeds *pro se* and has been granted leave to proceed *in forma pauperis*. On February 11, 2022, the Court assessed an initial filing fee of \$29 (Dkt. 7). The Court's order instructed Toala that, if he did not wish to pay the full filing fee, he could notify the Court in writing within 30 days that he does not wish to prosecute this civil action. On February 23, 2022, Toala submitted a letter stating that he no longer wishes to pursue this lawsuit (Dkt. 8).

Toala has clearly communicated his desire not to proceed with this case. Federal Rule of Civil Procedure 41(a) permits dismissal of an action at the plaintiff's request. A motion under Rule 41(a) "should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit." *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002). In this case, the defendants have not been served with process and will not be prejudiced.

The Court therefore **ORDERS** as follows:

1. This civil action is **DISMISSED** without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

2. The fee collection order entered in this case (Dkt.7) is **VACATED**. Officials with the Wharton County Jail shall make no further withdrawals from the inmate trust-fund account of the plaintiff, Misael Toala # 06102, to collect filing fees for Civil Action No. 4:21-4158. The plaintiff is advised, however, that funds properly withdrawn under the collection order to date will not be refunded.

3. All other pending motions, if any, are **DENIED as moot**.

The Clerk will provide a copy of this order to the plaintiff and to Wharton County Jail, Attn: Inmate Accounts, 315 East Elm Street, Wharton, TX 77488, ph. (979) 282-9555.

SIGNED at Houston, Texas, on March 9, 2022.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE